

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION

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BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Rates, Rating Plans,
Rating Systems and Underwriting
Guidelines of

File No. NC-2010-00007

NOTICE OF NONCOMPLIANCE

**SAFECO PROPERTY AND
CASUALTY INSURANCE
GROUP¹**

Respondent.

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of California (Commissioner) has good cause to believe that the rating plans, rating systems, rates and underwriting guidelines of the SAFECO PROPERTY AND CASUALTY INSURANCE GROUP¹ (Respondent or Safeco) violated various provisions of the California Insurance Code (CIC) and Title 10 of the California Code of Regulations (CCR). Pursuant to CIC section 1858, this Notice sets forth the manner and extent of noncompliance.

¹ Respondent Safeco Property and Casualty Insurance Group (NAIC Group #0163) is comprised in California of all of the following entities: American Economy Insurance Company (NAIC #19690, CDI #1822-6); American States Insurance Company (NAIC #19704, CDI #1819-2); American States Insurance Company of Texas (NAIC #19712, CDI #1789-7); American States Preferred Insurance Company (NAIC #37214, CDI #2395-2); First National Insurance Company of America (NAIC #24724, CDI #0978-7); General Insurance Company of America (NAIC #24732, CDI #0732-8); Insurance Company of Illinois (NAIC #26700, CDI #2851-4); Safeco Insurance Company of America (NAIC #24740, CDI #1442-3); and Safeco Insurance Company of Illinois (NAIC #39012, CDI #3056-9). Collectively, this Notice refers to this group of entities as "Respondent" or "Safeco."

1 Respondent is, and was at all relevant times, licensed to transact the business of
2 insurance in California.

3 Respondent transacts the business of insurance in California on risks or lines subject to
4 the provisions of the CIC and CCR.

5 The allegations in this Notice result from an examination (the examination or the exam)
6 by the California Department of Insurance (the Department or CDI) Field Rating and
7 Underwriting Bureau (FRUB). The examination focused on Respondent's rating and
8 underwriting practices. For commercial lines, the exam period was December 1, 2006 through
9 February 28, 2007. For personal lines, the exam period was April 1, 2007 through June 30,
10 2007. The Department undertook the examination to determine whether Respondent's operating
11 procedures comply with the CIC and the CCR. The Department prepared a "Report of Market
12 Conduct Examination of the Rating and Underwriting Practices of the Safeco Property and
13 Casualty Insurance Group," adopted on December 18, 2009 (report). The Report memorializes
14 the exam findings.

15 The relevant time periods for the allegations in this Notice commence on December 1,
16 2006 for commercial lines and April 1, 2007 for personal lines, and continue to the present.

18 **SPECIFIC ALLEGATIONS**

20 **NONCOMPLIANCE NO. 1:**

21 1. On exam, the Department determined that Respondent wrote statutory good
22 drivers² (good drivers) in Safeco Insurance Company of America (SICA), the preferred, lower
23 priced program. Respondent wrote non-good drivers and good drivers who lived in households
24 where both good drivers and non-good drivers resided (sometimes referred to as "mixed
25 households") in the non-standard, higher priced, American States Preferred Insurance
26 Company (ASPIC), an affiliate of Safeco.

27
28 ² The term "statutory good driver" means a person qualified to purchase a "good driver discount policy" by meeting the statutory and regulatory requirements set forth in CIC section 1861.05 and CCR section 2632.13.

1 2. When Respondent determined a driver was a statutory good driver and did not
2 live in a mixed household, Respondent placed the risk in SICA and considered no other risk
3 characteristics.

4 3. In underwriting ASPIC, the non-standard program, Respondent determined
5 eligibility for non-good drivers and drivers who lived in mixed households using an
6 underwriting model or “scorecard.” The model considered various, non-risk related, criteria
7 including, but not limited to, homeownership, prior insurance, occupation, not at-fault
8 accidents or claims, comprehensive losses, prior carrier market type (standard or non-standard)
9 and highest education level the applicant attained. For an insured to be eligible to purchase
10 insurance and be written in the non-standard program, Respondent required a minimum
11 scorecard score.

12 4. CIC section 1861.02(c) provides prior insurance may not be used in determining
13 rates, premiums or eligibility to purchase insurance. Respondent’s use of prior insurance in
14 rating and determining eligibility to purchase insurance violated CIC section 1861.02(c). These
15 violations are subject to monetary penalties under CIC section 1858.07.

16 5. CCR section 2360.2 requires that eligibility guidelines have a substantial
17 relationship to future risk of loss. At the time of the exam, Respondent had not established that
18 the criteria it used to determine eligibility to purchase insurance had the requisite relationship
19 to future risk of loss. The CDI believes and alleges that those criteria have no relationship to
20 future risk of loss. Therefore, use of the criteria as eligibility guidelines violated CCR section
21 2360.2 and CIC section 1861.05(a).

22 6. CIC section 1861.025 sets forth the primary factors to be considered in
23 determining whether the risk qualifies as a good driver. CCR sections 2632.13 and 2632.13.1
24 provide further detail on what must be considered in making the good driver determination.
25 Respondent’s eligibility guidelines used factors other than those allowed by law. Therefore,
26 application of Respondent’s eligibility guidelines violated CCR sections 2632.13 and
27 2632.13.1 and CIC section 1861.025.

1 7. In addition, CCR section 2632.5 provides specific factors that may be used as
2 auto rating factors in auto class plans. Respondent's model used other factors, which are not
3 permissible auto rating factors, to impact rates.

4 8. Respondent's use of impermissible auto rating factors violated CCR section
5 2632.5 and CIC sections 1861.02(a) and 1861.05(a).

6 9. Respondent's eligibility guidelines treated drivers with similar driving safety
7 records differently because Respondent applied non-driving safety record related criteria in the
8 eligibility model. This resulted in unfairly discriminatory treatment of similarly situated risks.
9 This also resulted in unfairly discriminatory rates because Respondent treated qualified good
10 drivers as ineligible for good driver discount policies. These acts violate CIC section
11 1861.05(a).

12 10. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
13 section 1858.07. The Department does not currently know the number of noncompliant acts.
14 That will be determined at hearing.

15
16 **NONCOMPLIANCE NO. 2:**

17 11. On exam, the Department determined that Respondent automatically wrote good
18 drivers in SICA, Respondent's preferred auto program. Respondent automatically wrote risks
19 that did not qualify as good drivers (non-good drivers) and good drivers residing in mixed
20 households in ASPIC, Respondent's non-standard program. Respondent did not offer good
21 drivers the option of purchasing a policy of automobile insurance from ASPIC.

22 12. CCR section 2632.14(a)(3) provides that a good driver has the option of
23 choosing any policy of insurance being marketed by the insurer. In households that included
24 both good drivers and non-good drivers, Respondent had no provision for allowing good
25 drivers to purchase a separate policy in SICA that excluded non-good drivers residing in the
26 same household. Respondent automatically placed policies covering drivers living in mixed
27 households in ASPIC. This denied good drivers the opportunity to select coverage in the
28

1 preferred SICA program and violated CCR section 2632.14(a)(3) and CIC section
2 1861.02(b)(1).

3 13. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
4 section 1858.07. The Department does not currently know the number of noncompliant acts.
5 That will be determined at hearing.

6
7 **NONCOMPLIANCE NO. 3:**

8 14. On exam, the Department determined that, in assessing accident surcharges in
9 private passenger auto and motorcycle lines, Respondent relied exclusively upon the use of a
10 Comprehensive Loss Underwriting Exchange report (CLUE) to determine principally at-fault
11 status. Also, Respondent did not ascertain whether the previous insurer assessed one violation
12 point for the accident.

13 15. CCR section 2632.5(c)(1)(A) requires that insurers utilize the public record of
14 traffic violation convictions available from the California Department of Motor Vehicles
15 (referred to as the Motor Vehicle Report or MVR), in order to determine a driver's safety
16 record.

17 16. At the time of exam, former CCR section 2632.13(f) and (g) provided that an
18 insurer issuing a policy of automobile or motorcycle insurance – to an insured who was
19 involved in a previous accident –may only charge one violation point, or consider the driver to
20 be principally at-fault, if the insurer at the time of the accident charged the driver one violation
21 point for the accident.

22 17. Respondent's exclusive reliance upon the CLUE report, and failure to use the
23 MVR, violated CCR section 2632.5(c)(1)(A), and therefore violated the enabling statutes CIC
24 sections 1861.02(a) and 1861.05. In addition, Respondent's failure to determine whether the
25 prior insurer assessed one violation point for a prior accident violated former CCR section
26 2632.13(f) and (g) and therefore violated the enabling statutes CIC sections 1861.02(a) and
27 1861.05.
28

1 18. During the relevant time period Respondent's "Auto Product Guide" provided
2 that Respondent considered all accidents chargeable unless proof was submitted that they were
3 non-chargeable. But CCR section 2632.13(f) provides that an insurer shall not consider a driver
4 to be principally at-fault for a prior accident unless certain conditions are met. Respondent's
5 application of the rule – that all prior accidents were considered chargeable unless proven
6 otherwise – violated former CCR section 2632.13(a), (f) and (g) and the enabling statutes CIC
7 sections 1861.02(a) and 1861.05.

8 19. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
9 section 1858.07. The Department does not currently know the number of noncompliant acts.
10 That will be determined at hearing.

11
12 **NONCOMPLIANCE NO. 4:**

13 20. On exam, the Department determined that Respondent was not using the public
14 record of traffic violation convictions in determining eligibility to purchase a good driver
15 discount policy. On exam, the Department reviewed Respondent's declinations and found that
16 Respondent based eligibility decisions upon information received from the applicant only, and
17 failed to order Motor Vehicle Reports.

18 21. CCR section 2632.5(c)(1)(A) requires that, for the purpose of determining a
19 driver's safety record, every insurer shall verify a driver's current safety record through a
20 Motor Vehicle Report. Respondent's failure to obtain the MVR when making the good driver
21 determination violated CCR section 2632.5(c)(1)(A) and CIC section 1861.02(a)(1).

22 22. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
23 section 1858.07. The Department does not currently know the number of noncompliant acts.
24 That will be determined at hearing.

25
26 **NONCOMPLIANCE NO. 5:**

27 23. On exam, the Department determined that Respondent bound coverage in
28 automobile insurance policies on acceptance of the application. Soon after binding coverage

1 Respondent mailed to policyholders a "Quote Acceptance Form." The form summarized
2 information gathered during the application process. The Quote Acceptance Form also stated
3 that Respondent had 60 days to review the application for final determination of eligibility and
4 that the policy was subject to cancellation within the 60-day review period.

5 24. CIC section 1861.03(c)(1) sets forth the criteria for a valid cancellation of an
6 automobile insurance policy. By cancelling automobile insurance policies that Respondent
7 issued at the time it bound coverage, Respondent violated CIC section 1861.03(c)(1) because
8 the cancellations were not based on one of the valid delineated criteria.

9 25. Failure to apply proper automobile cancellation procedures may result in rates
10 that are excessive, inadequate, unfairly discriminatory, or otherwise violate CIC section
11 1861.05.

12 26. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
13 section 1858.07. The Department does not currently know the number of noncompliant acts.
14 That will be determined at hearing.

15
16 **NONCOMPLIANCE NO. 6:**

17 27. On exam, the Department determined that Respondent issued automobile
18 insurance policies at the same time it bound coverage, on acceptance of the application.
19 Respondent used an underwriting model or scorecard to determine eligibility for non-good
20 drivers and drivers living in households with both good and non-good drivers. Respondent
21 cancelled personal auto policies within 60 days of binding coverage if it determined that a risk
22 did not meet its eligibility criteria.

23 28. In some instances Respondent cancelled policies of automobile insurance for
24 driving activity that the insured had disclosed on the application. In other instances Respondent
25 cancelled policies for driving safety record information from an MVR. In these cases
26 Respondent obtained the MVR driver safety information *after* the policy had been issued.

27 29. CIC section 1861.03(c)(1) sets forth the criteria for a valid cancellation of an
28 automobile insurance policy. Respondent's cancellation of automobile insurance policies –

1 after it had already issued the policies and bound coverage when it accepted the application –
2 violated CIC section 1861.03(c)(1) because Respondent did not base the cancellations on any
3 of the valid delineated criteria.

4 30. Failure to apply proper procedures for cancellation of auto policies may result in
5 rates that are excessive, inadequate, unfairly discriminatory, or otherwise in violation of CIC
6 section 1861.05.

7 31. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
8 section 1858.07. The Department does not currently know the number of noncompliant acts.
9 That will be determined at hearing.

10
11 **NONCOMPLIANCE NO. 7:**

12 32. On exam, the Department determined that Respondent's "Auto Product Guide"
13 required that Respondent maintain documentation of eligibility for Affinity Group Discounts in
14 agent files. Respondent did not maintain the required documentation. In addition, Respondent
15 failed to provide adequate documentation regarding the selection of a particular rate within the
16 allowable range for commercial multiple peril policies.

17 33. CCR section 2360.6 requires insurers to maintain documentation in every
18 insured's file, identifying all information supporting the rate charged. CCR sections 2360.0
19 and 2360.2 provide that insurers shall follow their own internal underwriting rules and
20 guidelines.

21 34. Failure to maintain required documentation was, by itself, a violation of CCR
22 section 2360.6 and CIC section 1861.05. In addition, Respondent's failure to adequately
23 document and adhere to its underwriting guidelines could lead to dissimilar treatment of
24 similar risks and therefore result in unfairly discriminatory rates in violation of CCR sections
25 2360.0(b) and 2360.2 and CIC section 1861.05(a).

26 35. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
27 section 1858.07. The Department does not currently know the number of noncompliant acts.
28 That will be determined at hearing.

1
2 **NONCOMPLIANCE NO. 8:**

3 36. On exam, the Department determined that Respondent's filed rating plan
4 included a two percent discount applicable to 1970 or later model four-door sedans or station
5 wagons, including mini-vans and sport utility vehicles. On exam the Department found that 68
6 of the 100 in-force policies in the sample contained at least one vehicle eligible for the four-
7 door discount, but for which Respondent applied no discount. Respondent has subsequently
8 admitted that it failed to give the discount to 64,755 qualified vehicles.

9 37. CIC section 1861.01(c) requires that the Commissioner must approve certain
10 insurance rates prior to their use. CIC section 1861.05(a) requires that the Commissioner shall
11 not approve any rate, or allow any rate to remain in effect, if the rate is excessive, inadequate,
12 unfairly discriminatory, or otherwise in violation of the Insurance Code. CCR section 2360.3
13 requires that an insurer shall charge the lowest premium for which the insured qualifies.

14 38. Respondent's failure to adhere to a filed and approved auto rating plan,
15 specifically as to application of the two percent discount, violated CCR section 2360.3 and CIC
16 sections 1861.01 and 1861.05, as inconsistent application of discounts necessarily resulted in
17 the charging of unapproved rates and/or in rates that were excessive, inadequate, unfairly
18 discriminatory or otherwise in violation of the law.

19 39. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
20 section 1858.07. The Department does not currently know the number of noncompliant acts.
21 That will be determined at hearing.

22
23 **NONCOMPLIANCE NO. 9:**

24 40. On exam, the Department determined that when Respondent non-renewed risks
25 from the preferred SICA program, it did not consistently evaluate risks for eligibility in the
26 ASPIC program. Respondent lacked specific, objective eligibility guidelines for renewing risks
27 in the non-standard ASPIC program. Respondent failed to offer coverage to those who, had
28 they been properly evaluated using specific, objective eligibility guidelines, would have

1 qualified for coverage. When the Department requested renewal risk eligibility guidelines,
2 Respondent provided the following:

3 When reviewing accounts due to activity, we underwrite each
4 account on its own merits. Claim frequency and driving activity are
5 two of many attributes analyzed by the underwriter to gauge the
6 potential for future losses and determine the acceptability of
7 continued coverage.

8 41. Respondent also applied inconsistent eligibility analysis. For example, when
9 analyzing eligibility for ASPIC risks, Respondent non-renewed some risks for having as few as
10 three violation points, while allowing other risks as many as eight violation points before non-
11 renewal. Respondent's lack of specific, objective eligibility guidelines resulted in inconsistent
12 assessment of renewals.

13 42. CIC section 1861.05(a) provides that no rate shall be approved or remain in
14 effect which is excessive, inadequate, unfairly discriminatory, or otherwise in violation of the
15 Insurance Code. Respondent's failure to treat policyholders consistently for renewal
16 assessments resulted in unfairly discriminatory treatment in violation of CIC section
17 1861.05(a).

18 43. Insurers shall maintain eligibility guidelines, for both new and renewal business,
19 that are specific, objective and related to the insured's loss exposure. CCR section 2360.2
20 requires an insurer to maintain eligibility guidelines for every line of insurance. An insured or
21 applicant who meets the eligibility guidelines shall qualify to purchase the insurance. CCR
22 section 2360.3 requires an insurer to charge the lowest premium for which the insured
23 qualifies. In addition, CCR section 2632.19(c)(1)(B) provides that non-renewal for a
24 substantial increase in the hazard insured against is only valid where the policyholder is
25 determined ineligible under the insurer's eligibility rules.

26 44. Where Respondent's eligibility rules are vague, applied inconsistently, or not
27 applied at all, the Department cannot ascertain the validity of non-renewal based on a
28 substantial increase in the hazard insured against. In addition, where Respondent did not have

1 in place specific, objective eligibility guidelines to evaluate the insured for eligibility in the
2 ASPIC program and offer coverage to those who qualified, Respondent's non-renewals
3 violated CCR section 2632.19(c)(1)(B) and CIC section 1861.05(a).

4 45. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
5 section 1858.07. The Department does not currently know the number of noncompliant acts.
6 That will be determined at hearing.

7
8 **NONCOMPLIANCE NO. 10:**

9 46. On exam, the Department determined that Respondent did not have a consistent
10 procedure in place to offer named driver exclusions to good drivers whose policies were
11 cancelled or non-renewed due to the driving record of a non-good driver.

12 47. CCR section 2632.12(b) provides that where a good driver is not eligible to
13 purchase a good driver discount policy, because another person in the household does not
14 qualify as a good driver, the insurer shall offer to the good driver a good driver discount policy
15 that excludes the non-eligible person from the policy.

16 48. CCR section 2632.19(f) provides that where a substantial increase in the hazard
17 insured against exists because of the violation points or circumstances of any person other than
18 the insured, that substantial increase in the hazard may be eliminated if the insured excludes
19 the other person from coverage by a named driver exclusion.

20 49. Respondent's failure to offer named driver exclusions to good drivers whose
21 policies were cancelled or non-renewed due to the driving record of a non-good driver with
22 whom they reside violated CCR sections 2632.12(b) and 2632.19(f) and CIC section
23 1861.02(b)(1).

24 50. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
25 section 1858.07. The Department does not currently know the number of noncompliant acts.
26 That will be determined at hearing.

NONCOMPLIANCE NO. 11:

51. On exam, the Department determined that Respondent did not have a procedure to ensure that policyholders were provided with 30 days to respond to requests for underwriting information. Respondent sent requests for underwriting information to agents only and failed to mail such requests directly to policyholders. Respondent non-renewed and cancelled policies where the policyholder did not respond within 30 days.

52. CCR section 2632.19(b)(1) requires that policyholders be allowed at least 30 days to respond to requests for underwriting information. Respondent did not provide its insureds 30 days to respond to requests for information because the policyholders never directly received the requests for information. Respondent's cancellation and non-renewal of policies under these circumstances violated CCR section 2632.19(b)(1) and CIC section 1861.03(c).

53. All of these noncompliant acts are subject to monetary penalties pursuant to CIC section 1858.07. The Department does not currently know the number of noncompliant acts. That will be determined at hearing.

NONCOMPLIANCE NO. 12:

54. On exam, the Department determined that in private passenger auto and motorcycle, Respondent used improper procedures for estimating and applying annual mileage figures for rating purposes.

55. Every three years on renewal, CCR section 2632.5(c)(2)(B)(i) requires insurers to request that policyholders provide an estimated expected annual mileage for each insured vehicle.

56. At least 30 days prior to policy expiration, CCR section 2632.5(c)(2)(B)(iii) requires insurers to provide applicants written notice of the annual mileage amount that was applied on the expiring policy and the annual mileage figure that will be applied upon renewal.

57. Respondents did not make the mileage request as required at least every three years. Failure to request that policyholders provide the annual miles estimate for the 12 month

1 period following policy renewal violated CCR section 2632.5(c)(2)(B)(i) and the enabling
2 statute CIC section 1861.02.

3 58. Respondents also failed to provide insureds with the annual mileage amount that
4 was applied in the previous policy period. This violated CCR section 2632.5(c)(2)(B)(iii) and
5 the enabling statute CIC section 1861.02.

6 59. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
7 section 1858.07. The Department does not currently know the number of noncompliant acts.
8 That will be determined at hearing.

9
10 **NONCOMPLIANCE NO. 13:**

11 60. On exam, the Department determined that Respondent refused to offer
12 motorcycle physical damage (comprehensive and collision) coverage to good drivers where the
13 vehicle was previously a total loss or was a salvage vehicle. Respondent made no exception for
14 statutory good drivers.

15 61. CIC section 1861.025 sets forth the criteria for purchase of a good driver
16 discount policy. Whether the vehicle to be insured was previously a total loss or salvage
17 vehicle is not a specified criteria.

18 62. CIC section 1861.02(b)(1) provides that every person who meets the criteria of
19 section 1861.025 shall be qualified to purchase a good driver discount policy from the insurer
20 of his or her choice and also provides that an insurer shall not refuse to offer and sell a good
21 driver discount policy to any person who qualifies as a good driver.

22 63. CCR section 2632.14(a)(2) requires insurers to offer physical damage coverage
23 to good drivers.

24 64. Respondent's refusal to offer physical damage coverage to good drivers violated
25 CCR section 2632.14(a)(2) and CIC section 1861.02(b)(1).

26 65. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
27 section 1858.07. The Department does not currently know the number of noncompliant acts.
28 That will be determined at hearing.

1
2 **NONCOMPLIANCE NO. 14:**

3 66. On exam, the Department determined that in motorcycle lines Respondent
4 defined a chargeable accident as one in which the driver's actions or omissions were at least 50
5 percent of the proximate cause of the accident.

6 67. Pursuant to CCR section 2632.13(c) an insurer may only consider a driver
7 principally at-fault if the driver's actions or omissions were at least 51 percent of the proximate
8 cause of the accident.

9 68. Respondent's use of a 50 percent threshold violated CCR section 2632.13(c) and
10 CIC section 1861.02(c).

11 69. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
12 section 1858.07. The Department does not currently know the number of noncompliant acts.
13 That will be determined at hearing.
14

15 **NONCOMPLIANCE NO. 15:**

16 70. On exam, the Department determined that in private passenger auto and
17 motorcycle lines 12 percent of the files reviewed contained rating errors, and 16 percent
18 contained non-rating errors in that the files lacked adequate documentation.

19 71. CIC section 1861.05(a) requires that the Commissioner shall not approve any
20 rate, or allow any rate to remain in effect, if the rate is excessive, inadequate, unfairly
21 discriminatory, or otherwise in violation of the Insurance Code. CIC section 1857 and CCR
22 section 2360.6 require that an insurer maintain documentation including all information used
23 by the insurer to rate the policy.

24 72. A high percentage of errors in rating may lead to inaccuracies in the data upon
25 which the insurer's ratemaking is predicated and therefore may result in rates that are
26 excessive, inadequate, or unfairly discriminatory. A high percentage of non-rating errors
27 demonstrates the insurer's failure to maintain documentation to support the rates charged.
28 Accordingly, Respondent's 12 percent rating error ratio and 16 percent non-rating error ratio

1 indicate a violation of CIC sections 1857 and 1861.05(a) and CCR section 2360.6.

2 73. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
3 section 1858.07. The Department does not currently know the number of noncompliant acts.
4 That will be determined at hearing.

5
6 **NONCOMPLIANCE NO. 16:**

7 74. On exam, the Department determined that Respondent used a computer model to
8 assess eligibility for new business in property insurance (“homeowners”) lines. The model used
9 applicant’s personal credit score and other information found in the applicant’s credit report to
10 assess eligibility. The Department reviewed 41 declinations and determined that 17 were
11 directly attributable to the use of credit score. Eight more declinations were due in part to credit
12 score.

13 75. The Department objected to Respondent’s use of credit as an eligibility criterion
14 in the prior examination. Respondent represented that it would continue to use credit score for
15 data collection purposes only. It would not prevent any prospective insured from obtaining
16 homeowners coverage based on the insured’s credit score.

17 76. CCR sections 2360.0 and 2360.2 require that an insurer maintain specific,
18 objective eligibility guidelines that have a substantial relationship to the insured’s loss
19 exposure.

20 77. Because Respondent has not demonstrated that credit score has a substantial
21 relationship to the insured’s loss exposure, use of this criteria as an eligibility guideline
22 violated CCR sections 2360.0(b) and 2360.2 and CIC section 1861.05(a).

23 78. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
24 section 1858.07. The Department does not currently know the number of noncompliant acts.
25 That will be determined at hearing.

1 **NONCOMPLIANCE NO. 17:**

2 79. On exam, the Department determined that Respondent non-renewed
3 homeowners insurance policies due to prior losses. The underwriters had discretion on these
4 non-renewals. Respondent non-renewed some policies with as few as two prior claims, and
5 non-renewed other policies with as many as four claims. Respondent did not have any
6 objective eligibility guidelines to ensure that its underwriters consistently evaluated losses to
7 determine whether the prior losses were substantially related to future loss exposure.

8 80. CCR sections 2360.0 and 2360.2 require that an insurer maintain specific,
9 objective eligibility guidelines that have a substantial relationship to the insured's loss
10 exposure.

11 81. Respondent's inconsistent use of prior losses for renewal and failure to
12 consistently evaluate prior losses to determine whether they were substantially related to future
13 loss exposure violated CCR sections 2360.0(b) and 2360.2 and CIC section 1861.05(a).

14 82. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
15 section 1858.07. The Department does not currently know the number of noncompliant acts.
16 That will be determined at hearing.

17
18 **NONCOMPLIANCE NO. 18:**

19 83. On exam, the Department determined that Respondent had guidelines to
20 determine correct tier placement of homeowners risks, yet it failed to apply those guidelines to
21 properly classify homeowners risks at renewal and determine correct tier placement.

22 84. CCR sections 2360.0 and 2360.2 require that an insurer maintain specific,
23 objective eligibility guidelines that have a substantial relationship to the insured's loss
24 exposure.

25 85. Although there was no rate differential between the different tiers during the
26 relevant time period, Respondent's failure to determine proper tier placement on renewal
27 through application of objective eligibility guidelines violated CCR sections 2360.0(b) and
28 2360.2. Further, Respondent's failure to apply its own guidelines may ultimately result in rates

1 that do not accurately reflect exposure, and may also allow for dissimilar treatment of similar
2 risks in the event that Respondent develops and files different rate levels for each of its tiers,
3 all of which may result in unfairly discriminatory rates in violation of CIC section 1861.05(a).

4 86. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
5 section 1858.07. The Department does not currently know the number of noncompliant acts.
6 That will be determined at hearing.

7
8 **NONCOMPLIANCE NO. 19:**

9 87. On exam, the Department determined that Respondent failed to follow its
10 underwriting guidelines in initially determining whether a homeowners' risk was acceptable
11 due to its location in an ineligible brush area. As a result, Respondent initially wrote ineligible
12 risks and then subsequently cancelled them.

13 88. CIC section 1861.01(c) requires that the Commissioner must approve certain
14 insurance rates prior to their use. CIC section 1861.05(a) requires that the Commissioner shall
15 not approve any rate, or allow any rate to remain in effect, if the rate is excessive, inadequate,
16 unfairly discriminatory, or otherwise in violation of the Insurance Code.

17 89. Respondent's failure to adhere to its underwriting guidelines violated CIC
18 section 1861.05, as inconsistent application of the underwriting guidelines necessarily resulted
19 in the charging of unapproved rates and/or in rates that were excessive, inadequate, unfairly
20 discriminatory or otherwise in violation of the law.

21 90. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
22 section 1858.07. The Department does not currently know the number of noncompliant acts.
23 That will be determined at hearing.

24
25 **NONCOMPLIANCE NO. 20:**

26 91. On exam, the Department determined that Respondent repeatedly failed to
27 include the "California Residential Property Insurance Bill of Rights" (Bill of Rights) in the
28 new business policy package sent to policyholders.

1 92. CIC section 10103.5(a) provides that an insurer shall provide a copy of the Bill
2 of Rights to insureds upon issuance of a policy and sets forth specific language that the Bill of
3 Rights must contain.

4 93. On exam the Department also found that the Bill of Rights disclosure in
5 Respondent's renewal business policy package did not contain the required language set forth
6 in CIC section 10103.5.

7 94. Failure to provide statutorily required disclosures upon policy issuance may
8 result in rates that are excessive, inadequate, unfairly discriminatory, or otherwise in violation
9 of CIC section 1861.05.

10 95. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
11 section 1858.07. The Department does not currently know the number of noncompliant acts.
12 That will be determined at hearing.

13
14 **NONCOMPLIANCE NO. 21:**

15 96. On exam, the Department determined that Respondent used a multivariate
16 underwriting model to determine eligibility, company placement and pricing for its commercial
17 multiple peril and commercial auto lines of business. The models differ by line of business and
18 between new and renewal business. In conjunction with the multivariate model, Respondent
19 used an automated underwriting platform (AUP) to determine the amount of schedule
20 modification applicable to each risk. The multivariate model assigns a target score (PRP)
21 which Respondent then applies as a factor to the base premium to achieve a modified base
22 premium as determined by the model. Respondent used the filed base rates and manipulated
23 the schedule rating plan to realize its target premium.

24 97. CIC section 1861.01(c) requires that the Commissioner must approve certain
25 insurance rates prior to their use. CIC section 1861.05(a) requires that the Commissioner shall
26 not approve any rate, or allow any rate to remain in effect, if the rate is excessive, inadequate,
27 unfairly discriminatory, or otherwise in violation of the Insurance Code.

1 98. Respondent failed to file and obtain prior approval of the model. Since the
2 model assigns factors to various criteria which affect the overall rate level charged, the
3 Commissioner must pre-approve these factors. Respondent's failure to obtain prior approval of
4 these factors violated CIC sections 1861.01(c) and 1861.05.

5 99. CCR sections 2360.0(b) and 2360.2 require an insurer to have sufficiently
6 detailed eligibility guidelines to determine the appropriate rating plan for the insured. CCR
7 section 2360.3 requires that an insurer charge each insured the lowest premium for which the
8 insured qualifies.

9 100. By using the model, Respondent failed to maintain specific and objective
10 eligibility guidelines. The AUP made eligibility decisions based upon a combination of factors,
11 with each factor having an unknown contribution to the target (PRP) scores. This violated CCR
12 sections 2360.0(b) and 2360.2 and CIC section 1861.05.

13 101. In addition, the AUP determines schedule rating modifications by using
14 characteristics of the risk provided on the application. Respondent does not perform any
15 individual risk assessment and the factual information in policyholder files does not support
16 modifications applied to risks. Respondent also used rationale to document the schedule
17 modifications that were redundant, inconsistent, or contradictory, applied inconsistently to
18 similarly situated insureds, and varied from year to year without a corresponding change in risk
19 characteristics. These acts also violated CCR sections 2360.0(b) and 2360.2 and CIC section
20 1861.05.

21 102. Respondent also failed to maintain mutually exclusive eligibility guidelines to
22 determine risk placement from among the standard, preferred, or surcharge tiers and to place
23 insureds into the tier having the lowest premium for which the insured qualifies. Since the
24 AUP system determined eligibility, on exam Respondent was unable to demonstrate, and the
25 Department was unable to verify, that Respondent was placing risks into the correct tiers.
26 Respondent's failure to place many risks into the lowest priced tiers for which they qualified
27 violated CCR section 2360.3 and CIC section 1861.05 (a).
28

103. All of these noncompliant acts are subject to monetary penalties pursuant to CIC section 1858.07. The Department does not currently know the number of noncompliant acts. That will be determined at hearing.

NONCOMPLIANCE NO. 22:

104. On exam, the Department determined that Respondent's filed rating plan provided a 25 percent maximum total of scheduled rating credits per policyholder. On exam the Department found at least six commercial multi peril policyholders who received scheduled rating credits in excess of the filed and approved maximum. Respondent subsequently admitted that 97 policies received excess credits.

105. CIC section 1861.01(c) requires that the Commissioner must approve certain insurance rates prior to their use. CIC section 1861.05(a) requires that the Commissioner shall not approve any rate, or allow any rate to remain in effect, if the rate is excessive, inadequate, unfairly discriminatory, or otherwise in violation of the Insurance Code.

106. Respondent's failure to adhere to a filed and approved rating plan, specifically as to application of the scheduled rating credits, violated CIC sections 1861.01(c) and 1861.05, as inconsistent application of the credits necessarily resulted in the charging of unapproved rates and/or in rates that were excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

107. All of these noncompliant acts are subject to monetary penalties pursuant to CIC section 1858.07. The Department does not currently know the number of noncompliant acts. That will be determined at hearing.

NONCOMPLIANCE NO. 23:

108. On exam, the Department determined that for the commercial multiple peril and commercial auto lines of business, Respondent declined risks based upon a prior insurer's cancellation or non-renewal of the risk. Respondent did not conduct further analysis to determine the risk's eligibility under its new business eligibility guidelines. Rather,

1 Respondent declined risks based solely upon a prior insurer's cancellation or non-renewal of
2 the risk. Further, Respondent failed to document any reason that the risk was ineligible under
3 its new business eligibility guidelines.

4 109. CCR sections 2360.0 and 2360.2 require that an insurer maintain specific,
5 objective eligibility guidelines that have a substantial relationship to the insured's loss
6 exposure.

7 110. At the time of the exam, Respondent had not established that a prior insurer's
8 cancellation or non-renewal had the requisite relationship to future risk of loss. The
9 Department believes and alleges those criteria have no relationship to future risk of loss.
10 Further, Respondent failed to conduct a risk analysis based upon specific, objective eligibility
11 guidelines. Therefore, use of prior cancellation or non-renewal as eligibility guidelines
12 violated CCR sections 2360.0 and 2360.2 and CIC section 1861.05(a).

13 111. CCR section 2360.6 requires that an insurer maintain documentation including
14 all information used by the insurer to rate the policy. By failing to document any reason that
15 the risk was ineligible, Respondent violated CCR section 2360.6 and the enabling statute CIC
16 section 1861.05.

17 112. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
18 section 1858.07. The Department does not currently know the number of noncompliant acts.
19 That will be determined at hearing.

20
21 **NONCOMPLIANCE NO. 24:**

22 113. On exam, the Department determined that in the commercial multiple peril line
23 of business, 22 percent of the files reviewed contained rating errors, and 17 percent of the files
24 reviewed contained non-rating errors because those files lacked adequate documentation.

25 114. CIC section 1861.05(a) requires that the Commissioner shall not approve any
26 rate, or allow any rate to remain in effect, if the rate is excessive, inadequate, unfairly
27 discriminatory, or otherwise in violation of the Insurance Code. CIC section 1857 and CCR
28 section 2360.6 require that an insurer maintain documentation including all information used

1 by the insurer to rate the policy.

2 115. A high percentage of errors in rating may lead to inaccuracies in the data upon
3 which the insurer's ratemaking is predicated and therefore may result in rates that are
4 excessive, inadequate, or unfairly discriminatory. A high percentage of non-rating errors
5 demonstrates the insurer's failure to maintain documentation to support the rates charged.
6 Accordingly, Respondent's 22 percent rating error ratio and 17 percent non-rating error ratio
7 indicate a violation of CIC sections 1857 and 1861.05(a) and CCR 2360.6.

8 116. All of these noncompliant acts are subject to monetary penalties pursuant to CIC
9 section 1858.07. The Department does not currently know the number of noncompliant acts.
10 That will be determined at hearing.

11
12 **RELIEF REQUESTED**

13 THE DEPARTMENT HEREBY NOTIFIES RESPONDENT that, to the extent
14 Respondent's unlawful practices are ongoing at the time of delivery of this Notice, Respondent
15 must correct its noncompliance within twenty (20) days of receipt of this Notice. For each
16 allegation listed above, Respondent must provide proof of system-wide correction, or other
17 response permitted by CIC section 1858.1, within twenty (20) days of receipt of this notice.

18 THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that if Respondent fails
19 to make an adequate or timely response, the Department will set a public hearing pursuant to
20 CIC sections 1858.2 and 1858.3. If, at the conclusion of the hearing, the Commissioner finds
21 that the facts are as alleged above and constitute violations of the Insurance Code and/or Code
22 of Regulations, as set forth, he may issue an order for payment of money penalties and any
23 other corrective action as he may deem appropriate.

24 THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that if the noncompliance
25 referred to above constitutes willful acts involving the use of rates, rating plans, and/or rating
26 systems in violation of Chapter 9, Part 2, Division 1 of the Insurance Code, the Department will
27 seek civil penalties pursuant to CIC section 1858.07 in the amount of \$10,000.00 for each act.

28 The Department may amend this Notice to set forth additional willful noncompliant acts

1 in violation of Chapter 9, Part 2, Division 1, of the Insurance Code and to seek additional
2 penalties in the amount of \$10,000.00 for each act.

3 THE DEPARTMENT FURTHER NOTIFIES RESPONDENT that, in the alternative, if
4 the Commissioner does not find those acts involving the use of rates, rating plans, and/or rating
5 systems in violation of Chapter 9, Part 2, Division 1 of the Insurance Code to be willful
6 violations of that chapter, the Department will seek civil penalties in the amount of \$5,000.00
7 for each act pursuant to CIC section 1858.07. The Commissioner reserves the right to seek any
8 other penalties provided under CIC section 1858.07 in the event the acts set forth above, or acts
9 alleged in any amended Notice, were inadvertent.

10 The Department may amend this Notice to set forth additional non-willful noncompliant
11 acts in violation of Chapter 9, Part 2, Division 1, of the Insurance Code and seek additional
12 penalties in the amount of \$5,000.00 for each act.

13
14 Dated: November 14, 2013

CALIFORNIA DEPARTMENT OF INSURANCE

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16 By _____/s/_____
17 Nikki S. McKennedy, Esq.
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